IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8183 OF 2004

M/s.Rusoday Securities Ltd. .. Petitioners

Versus

Canara Bank .. Respondent

Mr.R.L.Shethis for petitioners

Mr.Umesh Shetty for respondent No.1.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 19TH OCTOBER 2004.

P.C.

1. This petition challenges order passed by Debt Recovery Appellate Tribunal (DRAT) Mumbai dismissing the petitioners appeal. The Appeal was directed against order passed by the Presiding Officer, DRT -1, Mumbai.

2. By the order dated 24th June 2003, learned Presiding Officer, D.R.T. Mumbai dismissed an application being O.A. 26 of 2003 preferred by the petitioners. Petitioners by that application had prayed that an ex parte order in the O.A. No.2961 of 2000 be set aside. Respondents herein filed the above mentioned original application against the petitioners for recovery of a sum of Rs.23,12,955/-. It appears that upon institution of original application, notices were issued to petitioners. Insofar as petitioner No.1 is concerned, envelope containing the notice was returned with remark "refused" and insofar as petitioner No.2 is concerned, it came back with a remark "left". It was contended that the summons, therefore, were not served and the Tribunal erred in proceeding ex parte against the petitioners. Consequently, the ex parte order in the O.A. deserves to be set aside.

3. This application was opposed by respondent bank. It pointed out that there is no substance in the averments inasmuch as both petitioners were duly served. It was pointed out

that notice was sent to Kolkata and both notices were returned with remark "left". Insofar as peritioner No.2 is concerned, it was pointed out that notice was duly served on the address provided by him. Since the envelope containing notice addressed to him was returned with remark "refused", it was deemed to be good service. That apart, it was pointed out that a public notice was also issued in newspapers published from Kolkata as well as Hyderabad.

4. The learned Presiding Officer heard parties on this application and by his order dated 24th June 2003 concluded that petitioner No.2 could not point out that there is any error in the address on the envelope containing the notice. The Presiding Officer has concluded that if the address was incorrect or insufficient, the postal authorities would have returned the envelope with different remark and not with the remark "refused".

5. Insofar as petitioner company is concerned, the remark was "left". Thereupon, petitioner No.1 company was directed to be served

by public notice. Such notice was issued in newspapers circulated in Hyderabad and Kolkata. On this finding, the presiding officer concluded that no case is made out for setting aside the ex parte order. The matter was carried in Appeal to DRAT. The learned Chairperson of DRAT has upheld the order of Presiding Officer.

6. We have heard Shri Sethia for petitioners and Shri Shetty for respondents. Shri Sethia contends that the postal authorities have now communciated that there was an error on their part in placing the remark "refused". He requests to place on record letter from postal authorities to this effect. Shri Shetty objects to the said letter being taken on record, at this stage and in our opinion, rightly so.

7. After perusing the application filed by the petitioners, the reply thereto and impugned orders, we are satisfied that courts below have not committed any error nor are their findings perverse. The courts below after going through the materials placed before them, have concluded that there is no substance in the grievance of

petitioners and the ex-parte order passed in favour of respondent bank cannot be set aside. This court cannot interfere with such findings in exercise of writ jurisdiction. We cannot permit parties like petitioners to displace postal remarks at this belated stage. Full liberty was given to them by the Courts below but they were unable to produce anything to substantiate their grievance that the summons was not duly served.

8. There is no substance in this petition and it is accordingly dismissed with no orders as to costs.

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